

DAVID H. HOLT

IBLA 84-273

Decided July 9, 1985

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring lode mining claim abandoned and void. N MC 210387.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

A decision declaring an unpatented mining claim located after Oct. 21, 1976, abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), will be affirmed where the affidavit of assessment work due on or before Dec. 30, 1983, although filed prior to Jan. 19, 1984, was not received in an envelope postmarked prior to Dec. 31, 1983, such that the claimant can take advantage of 43 CFR 3833.0-5(m).

APPEARANCES: David H. Holt, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

David H. Holt has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated January 20, 1984, as amended on January 26, 1984, declaring the "538382685 For President" lode mining claim, N MC 210387, abandoned and void. The ground for the decision was appellant's failure to file timely with BLM either evidence of annual assessment work or a notice of intention to hold the claim for 1983 as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). 1/

1/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

Appellant's mining claim was located May 29, 1981, in Clark County, Nevada, and recorded with BLM on August 18, 1981, pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). Appellant filed timely with BLM affidavits of assessment work for 1981 and 1982. On January 13, 1984, appellant filed with BLM an affidavit of assessment work for 1983 which had previously been filed with the Clark County recorder on December 22, 1983. The affidavit was received by BLM in an envelope postmarked January 12, 1984.

In his statement of reasons for appeal, appellant contends that he did not intend to abandon the claim, and that the delay in filing was caused by an "increase in recordation fees [which] required the shuttling back and forth in the mail of the Notice of Intent or Proof of Labor document." 2/

[1] Section 314(a) of FLPMA, requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM "prior to December 31 of each year following the calendar year in which the said claim was located" either evidence of annual assessment work or a notice of intention to hold the claim. This requirement is replicated in the regulations at 43 CFR 3833.2-1(b)(1). Under the applicable Departmental regulation, 43 CFR 3833.0-5(m), "file" is defined as "being received and date stamped by the proper BLM office." However, for purposes of complying with 43 CFR 3833.2-1, a document will be deemed to be timely filed where it is "received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law." 43 CFR 3833.0-5(m). Effective December 30, 1982, this language was added to 43 CFR 3833.0-5(m) in order to account for delays in mail service around the holiday season, such that the postmark is deemed to be evidence that the document was filed timely in accordance with the statute, contingent on actual receipt of the document by January 19th. See 47 FR 56300 (Dec. 15, 1982).

In the present case, appellant was required to file his affidavit of assessment work for 1983 prior to December 31, 1983. Since the affidavit was filed on January 13, 1984, it was clearly untimely. Moreover, appellant cannot take advantage of 43 CFR 3833.0-5(m) where, although the affidavit was received by January 19, 1984, the affidavit was not received in an envelope postmarked prior to December 31, 1983, i.e., "within the period prescribed by law" for such a filing.

Under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), failure to file timely in accordance with section 314(a) of FLPMA, "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." In such circumstances, the claim "shall be void." 43 CFR 3833.4(a).

2/ Appellant is apparently referring to filing fees charged by the county recorder's office. Although BLM charges a "one time" fee for recordation of the notice of location, 43 CFR 3833.1-3, no fee is charged by BLM for the annual filing of evidence of assessment work or notice of intention to hold. There is no evidence that appellant's proof of labor was received by BLM prior to Jan. 13, 1984.

We have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein. Moreover, in Homestake, we reiterated the holding that because the statute provides for a conclusive presumption of abandonment upon the failure to comply with the statutory filing requirement, the Department does not have the authority to consider whether a claimant in fact intended to abandon the affected claim under the common law rules on abandonment. This holding was recently affirmed in United States v. Locke, supra at 1795-96. Thus, it is irrelevant whether appellant intended to abandon the claim involved herein.

We conclude that BLM properly declared appellant's mining claim abandoned and void for failure to comply with section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). Klondex Gold & Silver Mining Co., 69 IBLA 247 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

